

**Letter of Findings: 06-0127
Indiana Sales and Use Tax
For Years 2003-04**

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ISSUE

I. Use Tax: Imposition

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-3-2(a); IC § 6-2.5-3-7(a); IC § 6-8.1-9-1; [45 IAC 2.2-3-20](#); [45 IAC 15-5-3\(b\)\(6\)](#); *Hoogenboom-Nofziger v. State Bd. of Tax Comm'rs*, 715 N.E.2d 1018 (Ind. Tax Ct. 1999).

Taxpayer protests the assessment of use tax.

STATEMENT OF FACTS

Taxpayer is an Indiana S-corporation that operates a winter sports facility. During an audit investigation, the auditor discovered the taxpayer failed to pay sales tax on additional transactions made during tax years 2003 through 2004 (hereinafter "the audit period"). The audit investigation issued proposed assessments to the taxpayer assessing use tax for the additional transactions. The taxpayer submitted a protest challenging the assessment. The Indiana Department of Revenue ("Department") scheduled a hearing for August 1, 2006. The taxpayer neither appeared for the hearing nor contacted the Hearing Officer to request a continuance. Therefore, the Department will base the Letter of Findings on the documentation in the file.

I. Use Tax: Imposition

DISCUSSION

A presumption exists that all tax assessments are accurate. IC § 6-8.1-5-1(b). The taxpayer bears the burden of proving that an assessment is incorrect. *Id.* Indiana law establishes a proposition stating a hearing officer, and by extension the state-level taxing authorities of which the hearing officers are agents "do not have the duty to make a taxpayer's case." *Hoogenboom-Nofziger v. State Bd. Of Tax Comm'rs*, 715 N.E.2d 1018, 1024 (Ind. Tax Ct. 1999). "If a taxpayer or its representative fails to appear at a hearing without securing a continuance, the [D]epartment will decide the issues on the best information available to the [D]epartment." [45 IAC 15-5-3\(b\)\(6\)](#). Accordingly, the Department will decide the merits of the taxpayer's protest based on the applicable law and on information in the taxpayer's file.

IC § 6-2.5-3-2(a) imposes a use tax "on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." Per [45 IAC 2.2-3-20](#),

All purchases of tangible personal property which are delivered to the purchaser for storage, use, or consumption in the state of Indiana are subject to the use tax. . . . if the seller is not required to collect the tax or fails to collect the tax when required to do so, the purchaser must remit the use tax directly to the Indiana Department of Revenue.

IC § 6-2.5-3-7(a) further provides,

A person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana, unless the person or the retail merchant can produce evidence to rebut that presumption.

From the available information, the taxpayer argues the audit investigation erred in imposing use tax on the additional transactions the taxpayer made during the audit period. The taxpayer contends the additional transactions examined during the audit investigation involved purchases where either the taxpayer paid a sales tax, or that the transaction were for exempt services, or that taxpayer made on behalf of different entities. However, the information in the taxpayer's file does not substantiate the taxpayer's contentions. The copies of invoices submitted by the taxpayer do not correlate to any of the itemized transactions for which the Department assessed the use tax. Moreover, the taxpayer provides no evidence to prove the transactions were only for labor. Thus, without more information from the taxpayer, the taxpayer fails to overcome its burden of proving that the additional transactions were not subject to use tax.

The taxpayer further argues the Department should allow it to credit the assessment with the amount of sales tax it erroneously remitted to the Department for locker rentals. However, the Department is unable to provide for the relief requested by the taxpayer in this Letter of Finding. By asking to credit the assessment, the taxpayer is in effect asking the Department to refund the sales tax collected and remitted on the locker rentals.

In order to receive such credit, the taxpayer must first initiate a claim for refund pursuant to IC § 6-8.1-9-1. Once the taxpayer initiates the claim for refund, the Department will then determine whether the taxpayer establishes an entitlement to a refund of the remitted sales tax and whether any amount of the refund is applicable for credit on the use tax assessment.

FINDING

For the reasons stated above, the Department denies the taxpayer's protest.

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